

AMENDED IN ASSEMBLY APRIL 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 994

Introduced by Assembly Member Cox

February 20, 2003

An act to amend Sections 65583, ~~65583.1, 65588, and 65589.5~~ and 65584 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 994, as amended, Cox. Housing: prison beds.

(1) The Planning and Zoning Law prescribes the provisions to be included in the housing element of a city or county general plan. The housing element is required to identify adequate sites for housing, ~~including rental housing, factory-built housing, and mobilehomes, and~~ to make adequate provision for the existing and projected needs of all economic segments of the community. ~~Existing law, for those purposes, allows a city or county to substitute prescribed affordable housing for a specified percent of the obligation to identify adequate sites for any income category. Existing law also prohibits a local agency from disapproving or imposing specified conditions on an affordable housing development unless it makes specified written findings.~~

~~This bill would require the housing element to include an analysis of existing prison beds within the jurisdiction with the intention of meeting its very low, low-, and moderate-income housing requirement. The bill would provide that the prison beds in the jurisdiction count toward the requirement to identify adequate sites, and would include prison beds within the definition of affordable housing that subjects a local agency to the requirement to make those written findings. The,~~

and to contain an assessment of housing needs and an inventory of resources and constraints relative to meeting those needs.

This bill would require that assessment and inventory to include the amount of land within the city or county owned by the state or federal government and unable to be rezoned by the city or county.

(2) Existing law requires prescribed data to be taken into consideration in determining the share of a city or county of the regional housing needs.

This bill would require that data to include the amount of land within the city or county owned by the state or federal government and unable to be rezoned by the city or county.

The bill would create a state-mandated local program by imposing new duties on local agencies.

~~(2)~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65583 of the Government Code is
 2 amended to read:
 3 65583. The housing element shall consist of an identification
 4 and analysis of existing and projected housing needs and a
 5 statement of goals, policies, quantified objectives, financial
 6 resources, and scheduled programs for the preservation,
 7 improvement, and development of housing. The housing element
 8 shall identify adequate sites for housing, including rental housing,
 9 factory-built housing, and mobilehomes, and shall make adequate
 10 provision for the existing and projected needs of all economic

1 segments of the community. The element shall contain all of the
2 following:

3 (a) An assessment of housing needs and an inventory of
4 resources and constraints relevant to the meeting of these needs.
5 The assessment and inventory shall include all of the following:

6 (1) An analysis of population and employment trends and
7 documentation of projections and a quantification of the locality's
8 existing and projected housing needs for all income levels. These
9 existing and projected needs shall include the locality's share of the
10 regional housing need in accordance with Section 65584.

11 (2) An analysis and documentation of household
12 characteristics, including level of payment compared to ability to
13 pay, housing characteristics, including overcrowding, and housing
14 stock condition.

15 (3) An inventory of land suitable for residential development,
16 including vacant sites and sites having potential for
17 redevelopment, and an analysis of the relationship of zoning and
18 public facilities and services to these sites.

19 (4) An analysis of potential and actual governmental
20 constraints upon the maintenance, improvement, or development
21 of housing for all income levels and for persons with disabilities
22 as identified in the analysis pursuant to paragraph (6), including
23 land use controls, building codes and their enforcement, site
24 improvements, fees and other exactions required of developers,
25 and local processing and permit procedures. The analysis shall also
26 demonstrate local efforts to remove governmental constraints that
27 hinder the locality from meeting its share of the regional housing
28 need in accordance with Section 65584 and from meeting the need
29 for housing for persons with disabilities identified pursuant to
30 paragraph (6).

31 (5) An analysis of potential and actual nongovernmental
32 constraints upon the maintenance, improvement, or development
33 of housing for all income levels, including the availability of
34 financing, the price of land, and the cost of construction.

35 (6) An analysis of any special housing needs, such as those of
36 the elderly, persons with disabilities, large families, farmworkers,
37 families with female heads of households, and families and
38 persons in need of emergency shelter.

39 (7) An analysis of opportunities for energy conservation with
40 respect to residential development.

~~(8) An analysis of existing prison beds within a city, county, or city and county's jurisdiction with the intention of meeting its very low, low-, and moderate-income housing requirement.~~

~~(8) An analysis of the land owned by the state and the federal government that is unable to be rezoned by a local agency.~~

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can

1 be used to preserve, for lower income households, the assisted
2 housing developments, identified in this paragraph, including, but
3 not limited to, federal Community Development Block Grant
4 Program funds, tax increment funds received by a redevelopment
5 agency of the community, and administrative fees received by a
6 housing authority operating within the community. In considering
7 the use of these financing and subsidy programs, the analysis shall
8 identify the amounts of funds under each available program which
9 have not been legally obligated for other purposes and which could
10 be available for use in preserving assisted housing developments.

11 (b) (1) A statement of the community's goals, quantified
12 objectives, and policies relative to the maintenance, preservation,
13 improvement, and development of housing.

14 (2) It is recognized that the total housing needs identified
15 pursuant to subdivision (a) may exceed available resources and the
16 community's ability to satisfy this need within the content of the
17 general plan requirements outlined in Article 5 (commencing with
18 Section 65300). Under these circumstances, the quantified
19 objectives need not be identical to the total housing needs. The
20 quantified objectives shall establish the maximum number of
21 housing units by income category that can be constructed,
22 rehabilitated, and conserved over a five-year time period.

23 (c) A program that sets forth a five-year schedule of actions the
24 local government is undertaking or intends to undertake to
25 implement the policies and achieve the goals and objectives of the
26 housing element through the administration of land use and
27 development controls, provision of regulatory concessions and
28 incentives, and the utilization of appropriate federal and state
29 financing and subsidy programs when available and the utilization
30 of moneys in a low- and moderate-income housing fund of an
31 agency if the locality has established a redevelopment project area
32 pursuant to the Community Redevelopment Law (Division 24
33 (commencing with Section 33000) of the Health and Safety Code).
34 In order to make adequate provision for the housing needs of all
35 economic segments of the community, the program shall do all of
36 the following:

37 (1) (A) Identify adequate sites that will be made available
38 through appropriate zoning and development standards and with
39 services and facilities, including sewage collection and treatment,
40 domestic water supply, and septic tanks and wells, needed to

1 facilitate and encourage the development of a variety of types of
2 housing for all income levels, including multifamily rental
3 housing, factory-built housing, mobilehomes, housing for
4 agricultural employees, emergency shelters, transitional housing,
5 and prison beds in order to meet the community's housing goals
6 as identified in subdivision (b).

7 (i) Where the inventory of sites, pursuant to paragraph (3) of
8 subdivision (a), does not identify adequate sites to accommodate
9 the need for groups of all household income levels pursuant to
10 Section 65584, the program shall provide for sufficient sites with
11 zoning that permits owner-occupied and rental multifamily
12 residential use by right, including density and development
13 standards that could accommodate and facilitate the feasibility of
14 housing for very low and low-income households.

15 (ii) Where the inventory of sites pursuant to paragraph (3) of
16 subdivision (a) does not identify adequate sites to accommodate
17 the need for farmworker housing, the program shall provide for
18 sufficient sites to meet the need with zoning that permits
19 farmworker housing use by right, including density and
20 development standards that could accommodate and facilitate the
21 feasibility of the development of farmworker housing for low- and
22 very low income households.

23 (B) For purposes of this paragraph, the phrase "use by right"
24 shall mean the use does not require a conditional use permit, except
25 when the proposed project is a mixed-use project involving both
26 commercial or industrial uses and residential uses. Use by right for
27 all rental multifamily residential housing shall be provided in
28 accordance with subdivision (f) of Section 65589.5.

29 (C) The requirements of this subdivision regarding
30 identification of sites for farmworker housing shall apply
31 commencing with the next revision of housing elements required
32 by Section 65588 following the enactment of this subparagraph.

33 (2) Assist in the development of adequate housing to meet the
34 needs of low- and moderate-income households.

35 (3) Address and, where appropriate and legally possible,
36 remove governmental constraints to the maintenance,
37 improvement, and development of housing, including housing for
38 all income levels and housing for persons with disabilities. The
39 program shall remove constraints to, or provide reasonable
40 accommodations for housing designed for, intended for

1 occupancy by, or with supportive services for, persons with
2 disabilities.

3 (4) Conserve and improve the condition of the existing
4 affordable housing stock, which may include addressing ways to
5 mitigate the loss of dwelling units demolished by public or private
6 action.

7 (5) Promote housing opportunities for all persons regardless of
8 race, religion, sex, marital status, ancestry, national origin, color,
9 familial status, or disability.

10 (6) (A) Preserve for lower income households the assisted
11 housing developments identified pursuant to paragraph (9) of
12 subdivision (a). The program for preservation of the assisted
13 housing developments shall utilize, to the extent necessary, all
14 available federal, state, and local financing and subsidy programs
15 identified in paragraph (9) of subdivision (a), except where a
16 community has other urgent needs for which alternative funding
17 sources are not available. The program may include strategies that
18 involve local regulation and technical assistance.

19 (B) The program shall include an identification of the agencies
20 and officials responsible for the implementation of the various
21 actions and the means by which consistency will be achieved with
22 other general plan elements and community goals. The local
23 government shall make a diligent effort to achieve public
24 participation of all economic segments of the community in the
25 development of the housing element, and the program shall
26 describe this effort.

27 (d) The analysis and program for preserving assisted housing
28 developments required by the amendments to this section enacted
29 by the Statutes of 1989 shall be adopted as an amendment to the
30 housing element by July 1, 1992.

31 (e) Failure of the department to review and report its findings
32 pursuant to Section 65585 to the local government between July
33 1, 1992, and the next periodic review and revision required by
34 Section 65588, concerning the housing element amendment
35 required by the amendments to this section by the Statutes of 1989,
36 shall not be used as a basis for allocation or denial of any housing
37 assistance administered pursuant to Part 2 (commencing with
38 Section 50400) of Division 31 of the Health and Safety Code.

39 ~~SEC. 2.—Section 65583.1 of the Government Code is amended~~

1 SEC. 2. *Section 65584 of the Government Code is amended to*
2 *read:*

3 65584. (a) (1) For purposes of subdivision (a) of Section
4 65583, the share of a city or county of the regional housing needs
5 includes that share of the housing need of persons at all income
6 levels within the area significantly affected by a general plan of the
7 city or county. ~~The~~

8 (2) *The* distribution of regional housing needs shall, based
9 upon available data, take into consideration market demand for
10 housing;; employment opportunities;; the availability of suitable
11 sites and public facilities;; commuting patterns;; type and tenure
12 of housing need;; the loss of units contained in assisted housing
13 developments, as defined in paragraph (8) of subdivision (a) of
14 Section 65583, that changed to non-low-income use through
15 mortgage prepayment, subsidy contract expirations, or
16 termination of use restrictions,~~and~~; the housing needs of
17 farmworkers, *and the amount of land within the city or county*
18 *owned by the state or federal government and unable to be rezoned*
19 *by the city or county.* The distribution shall seek to reduce the
20 concentration of lower income households in cities or counties that
21 already have disproportionately high proportions of lower income
22 households. ~~Based~~

23 (3) *Based* upon population projections produced by the
24 Department of Finance and regional population forecasts used in
25 preparing regional transportation plans, and in consultation with
26 each council of governments, the Department of Housing and
27 Community Development shall determine the regional share of the
28 statewide housing need at least two years prior to the second
29 revision, and all subsequent revisions as required pursuant to
30 Section 65588. Based upon data provided by the department
31 relative to the statewide need for housing, each council of
32 governments shall determine the existing and projected housing
33 need for its region. Within 30 days following notification of this
34 determination, the department shall ensure that this determination
35 is consistent with the statewide housing need. The department may
36 revise the determination of the council of governments if
37 necessary to obtain this consistency. The appropriate council of
38 governments shall determine the share for each city or county
39 consistent with the criteria of this subdivision and with the advice
40 of the department subject to the procedure established pursuant to

1 subdivision (c) at least one year prior to the second revision, and
2 at five-year intervals following the second revision pursuant to
3 Section 65588. The council of governments shall submit to the
4 department information regarding the assumptions and
5 methodology to be used in allocating the regional housing need.
6 As part of the allocation of the regional housing need, the council
7 of governments, or the department pursuant to subdivision (b),
8 shall provide each city and county with data describing the
9 assumptions and methodology used in calculating its share of the
10 regional housing need. The department shall submit to each
11 council of governments information regarding the assumptions
12 and methodology to be used in allocating the regional share of the
13 statewide housing need. As part of its determination of the regional
14 share of the statewide housing need, the department shall provide
15 each council of governments with data describing the assumptions
16 and methodology used in calculating its share of the statewide
17 housing need. The councils of governments shall provide each city
18 and county with the department's information. ~~The~~

19 (4) *The* council of governments shall provide a subregion with
20 its share of the regional housing need, and delegate responsibility
21 for providing allocations to cities and a county or counties in the
22 subregion to a subregional entity if this responsibility is requested
23 by a county and all cities in the county, a joint powers authority
24 established pursuant to Chapter 5 (commencing with Section
25 6500) of Division 7 of Title 1, or the governing body of a
26 subregional agency established by the council of governments, in
27 accordance with an agreement entered into between the council of
28 governments and the subregional entity that sets forth the process,
29 timing, and other terms and conditions of that delegation of
30 responsibility.

31 (b) For areas with no council of governments, the department
32 shall determine housing market areas and define the regional
33 housing need for cities and counties within these areas pursuant to
34 the provisions for the distribution of regional housing needs in
35 subdivision (a). If the department determines that a city or county
36 possesses the capability and resources and has agreed to accept the
37 responsibility, with respect to its jurisdiction, for the identification
38 and determination of housing market areas and regional housing
39 needs, the department shall delegate this responsibility to the cities
40 and counties within these areas.

(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographical restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grants a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the council of governments or the department.

1 (4) The determination of the council of governments or the
2 department, as the case may be, shall be subject to judicial review
3 pursuant to Section 1094.5 of the Code of Civil Procedure.

4 (5) The council of governments or the department shall reduce
5 the share of regional housing needs of a county if all of the
6 following conditions are met:

7 (A) One or more cities within the county agree to increase its
8 share or their shares in an amount that will make up for the
9 reduction.

10 (B) The transfer of shares shall only occur between a county
11 and cities within that county.

12 (C) The county's share of low-income and very low income
13 housing shall be reduced only in proportion to the amount by
14 which the county's share of moderate- and above
15 moderate-income housing is reduced.

16 (D) The council of governments or the department, whichever
17 assigned the county's share, shall have authority over the approval
18 of the proposed reduction, taking into consideration the criteria of
19 subdivision (a).

20 (6) The housing element shall contain an analysis of the factors
21 and circumstances, with all supporting data, justifying the
22 revision. All materials and data used to justify any revision shall
23 be made available upon request by any interested party within
24 seven days upon payment of reasonable costs of reproduction
25 unless the costs are waived due to economic hardship.

26 (d) (1) Except as provided in paragraph (2), any ordinance,
27 policy, or standard of a city or county that directly limits, by
28 number, the building permits that may be issued for residential
29 construction, or limits for a set period of time the number of
30 buildable lots that may be developed for residential purposes, shall
31 not be a justification for a determination or a reduction in the share
32 of a city or county of the regional housing need.

33 (2) Paragraph (1) does not apply to any city or county that
34 imposes a moratorium on residential construction for a specified
35 period of time in order to preserve and protect the public health and
36 safety. If a moratorium is in effect, the city or county shall, prior
37 to a revision pursuant to subdivision (c), adopt findings that
38 specifically describe the threat to the public health and safety and
39 the reasons why construction of the number of units specified as

1 its share of the regional housing need would prevent the mitigation
2 of that threat.

3 (e) Any authority to review and revise the share of a city or
4 county of the regional housing need granted under this section
5 shall not constitute authority to revise, approve, or disapprove the
6 manner in which the share of the city or county of the regional
7 housing need is implemented through its housing program.

8 (f) A fee may be charged to interested parties for any additional
9 costs caused by the amendments made to subdivision (c) by
10 Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days
11 the time within which materials and data shall be made available
12 to interested parties.

13 (g) Determinations made by the department, a council of
14 governments, or a city or county pursuant to this section are
15 exempt from the California Environmental Quality Act, Division
16 13 (commencing with Section 21000) of the Public Resources
17 Code.

18 to read:

19 ~~65583.1. (a) The Department of Housing and Community~~
20 ~~Development, in evaluating a proposed or adopted housing~~
21 ~~element for compliance with state law, may allow a city or county~~
22 ~~to identify adequate sites, as required pursuant to Section 65583,~~
23 ~~by a variety of methods, including, but not limited to,~~
24 ~~redesignation of property to a more intense land use category and~~
25 ~~increasing the density allowed within one or more categories. The~~
26 ~~department may also allow a city or county to identify sites for~~
27 ~~second units based on the number of second units developed in the~~
28 ~~prior housing element planning period whether or not the units are~~
29 ~~permitted by right, the need for these units in the community, the~~
30 ~~resources or incentives available for their development, and any~~
31 ~~other relevant factors, as determined by the department. Nothing~~
32 ~~in this section reduces the responsibility of a city or county to~~
33 ~~identify, by income category, the total number of sites for~~
34 ~~residential development as required by this article.~~

35 ~~(b) Sites that contain permanent housing units located on a~~
36 ~~military base undergoing closure or conversion as a result of action~~
37 ~~pursuant to the Defense Authorization Amendments and Base~~
38 ~~Closure and Realignment Act (Public Law 100-526), the Defense~~
39 ~~Base Closure and Realignment Act of 1990 (Public Law 101-510),~~
40 ~~or any subsequent act requiring the closure or conversion of a~~

~~military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.~~

~~Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.~~

~~(e) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and that meet the requirements of paragraph (2). The number of prison beds in the local agency's jurisdiction shall count toward this requirement. Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:~~

~~(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.~~

~~(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.~~

~~(C) Demonstrate that the units meet the requirements of paragraph (2).~~

~~(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:~~

~~(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:~~

~~(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.~~

~~(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.~~

~~(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.~~

~~(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low~~

income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of

~~1 1937, as amended (42 U.S.C. Sec. 1437f); any state and local
2 multifamily revenue bond programs; local redevelopment
3 programs; the federal Community Development Block Grant
4 Program; and other local housing assistance programs or units
5 that were used to qualify for a density bonus pursuant to Section
6 65916.~~

~~7 (iii) The city or county finds, after a public hearing, that the unit
8 is eligible, and is reasonably expected, to change from housing
9 affordable to low- and very low income households to any other
10 use during the next five years due to termination of subsidy
11 contracts, mortgage prepayment, or expiration of restrictions on
12 use.~~

~~13 (iv) The unit is in decent, safe, and sanitary condition at the
14 time of occupancy.~~

~~15 (v) At the time the unit is identified for preservation it is
16 available at affordable cost to persons or families of low- or very
17 low income.~~

~~18 (3) This subdivision does not apply to any city or county that,
19 during the current or immediately prior planning period, as
20 defined by Section 65588, has not met any of its share of the
21 regional need for affordable housing, as defined in Section 65584,
22 for low- and very low income households. A city or county shall
23 document for any such housing unit that a building permit has been
24 issued and all development and permit fees have been paid or the
25 unit is eligible to be lawfully occupied.~~

~~26 (4) For purposes of this subdivision, “committed assistance”
27 means that the city or county enters into a legally enforceable
28 agreement during the first two years of the housing element
29 planning period that obligates sufficient available funds to provide
30 the assistance necessary to make the identified units affordable and
31 that requires that the units be made available for occupancy within
32 two years of the execution of the agreement. “Committed
33 assistance” does not include tenant-based rental assistance.~~

~~34 (5) For purposes of this subdivision, “net increase” includes
35 only housing units provided committed assistance pursuant to
36 subparagraph (A) or (B) of paragraph (2) in the current planning
37 period, as defined in Section 65588, that were not provided
38 committed assistance in the immediately prior planning period.~~

~~39 (6) For purposes of this subdivision, “the time the unit is
40 identified” means the earliest time when any city or county agent,~~

1 acting on behalf of a public entity, has proposed in writing or has
2 proposed orally or in writing to the property owner, that the unit
3 be considered for substantial rehabilitation, acquisition, or
4 preservation.

5 (7) On July 1 of the third year of the planning period, as defined
6 by Section 65588, in the report required pursuant to Section
7 65400, each city or county that has included in its housing element
8 a program to provide units pursuant to subparagraph (A), (B), or
9 (C) of paragraph (2) shall report in writing to the legislative body,
10 and to the department within 30 days of making its report to the
11 legislative body, on its progress in providing units pursuant to this
12 subdivision. The report shall identify the specific units for which
13 committed assistance has been provided or which have been made
14 available to low- and very low-income households, and it shall
15 adequately document how each unit complies with this
16 subdivision. If, by July 1 of the third year of the planning period,
17 the city or county has not entered into an enforceable agreement
18 of committed assistance for all units specified in the programs
19 adopted pursuant to subparagraph (A), (B), or (C) of paragraph
20 (2), the city or county shall, not later than July 1 of the fourth year
21 of the planning period, adopt an amended housing element in
22 accordance with Section 65585, identifying additional adequate
23 sites pursuant to paragraph (1) of subdivision (c) of Section 65583
24 sufficient to accommodate the number of units for which
25 committed assistance was not provided. If a city or county does not
26 amend its housing element to identify adequate sites to address any
27 shortfall, or fails to complete the rehabilitation, acquisition,
28 purchase of affordability covenants, or the preservation of any
29 housing unit within two years after committed assistance was
30 provided to that unit, it shall be prohibited from identifying units
31 pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the
32 housing element that it adopts for the next planning period, as
33 defined in Section 65588, above the number of units actually
34 provided or preserved due to committed assistance.

35 SEC. 3. Section 65588 of the Government Code is amended
36 to read:

37 65588. (a) Each local government shall review its housing
38 element as frequently as appropriate to evaluate all of the
39 following:

1 ~~(1) The appropriateness of the housing goals, objectives, and~~
2 ~~policies in contributing to the attainment of the state housing goal.~~

3 ~~(2) The effectiveness of the housing element in attainment of~~
4 ~~the community's housing goals and objectives.~~

5 ~~(3) The progress of the city, county, or city and county in~~
6 ~~implementation of the housing element.~~

7 ~~(b) The housing element shall be revised as appropriate, but not~~
8 ~~less than every five years, to reflect the results of this periodic~~
9 ~~review.~~

10 ~~(c) The review and revision of housing elements required by~~
11 ~~this section shall take into account any low- or moderate-income~~
12 ~~housing provided or required pursuant to Section 65590.~~

13 ~~(d) The review pursuant to subdivision (c) shall include, but~~
14 ~~need not be limited to, the following:~~

15 ~~(1) The number of new housing units approved for~~
16 ~~construction within the coastal zone after January 1, 1982.~~

17 ~~(2) The number of housing units for persons and families of~~
18 ~~low or moderate income, as defined in Section 50093 of the Health~~
19 ~~and Safety Code, required to be provided in new housing~~
20 ~~developments either within the coastal zone or within three miles~~
21 ~~of the coastal zone pursuant to Section 65590.~~

22 ~~(3) The number of existing residential dwelling units occupied~~
23 ~~by persons and families of low or moderate income, as defined in~~
24 ~~Section 50093 of the Health and Safety Code, that have been~~
25 ~~authorized to be demolished or converted since January 1, 1982,~~
26 ~~in the coastal zone.~~

27 ~~(4) The number of residential dwelling units for persons and~~
28 ~~families of low or moderate income, as defined in Section 50093~~
29 ~~of the Health and Safety Code, that have been required for~~
30 ~~replacement or authorized to be converted or demolished as~~
31 ~~identified in paragraph (3). The location of the replacement units,~~
32 ~~either onsite, elsewhere within the locality's jurisdiction within the~~
33 ~~coastal zone, or within three miles of the coastal zone within the~~
34 ~~locality's jurisdiction, shall be designated in the review.~~

35 ~~(5) The number of existing prison beds for the purposes of~~
36 ~~meeting its low- or moderate-income housing requirement.~~

37 ~~(e) Notwithstanding subdivision (b) or the date of adoption of~~
38 ~~the housing elements previously in existence, the dates of revisions~~
39 ~~for the housing element shall be modified as follows:~~

1 ~~(1) Local governments within the regional jurisdiction of the~~
2 ~~Southern California Association of Governments: December 31,~~
3 ~~2000, for the third revision, and June 30, 2005, for the fourth~~
4 ~~revision.~~

5 ~~(2) Local governments within the regional jurisdiction of the~~
6 ~~Association of Bay Area Governments: December 31, 2001, for~~
7 ~~the third revision, and June 30, 2006, for the fourth revision.~~

8 ~~(3) Local governments within the regional jurisdiction of the~~
9 ~~Council of Fresno County Governments, the Kern County Council~~
10 ~~of Governments, and the Sacramento Area Council of~~
11 ~~Governments: June 30, 2002, for the third revision, and June 30,~~
12 ~~2007, for the fourth revision.~~

13 ~~(4) Local governments within the regional jurisdiction of the~~
14 ~~Association of Monterey Bay Area Governments: December 31,~~
15 ~~2002, for the third revision, and June 30, 2007, for the fourth~~
16 ~~revision.~~

17 ~~(5) Local governments within the regional jurisdiction of the~~
18 ~~San Diego Association of Governments: December 31, 1999, for~~
19 ~~the third revision cycle ending June 30, 1999, and June 30, 2004,~~
20 ~~for the fourth revision.~~

21 ~~(6) All other local governments: December 31, 2003, for the~~
22 ~~third revision, and June 30, 2008, for the fourth revision.~~

23 ~~(7) Subsequent revisions shall be completed not less often than~~
24 ~~at five-year intervals following the fourth revision.~~

25 ~~SEC. 4. Section 65589.5 of the Government Code is amended~~
26 ~~to read:~~

27 ~~65589.5. (a) The Legislature finds and declares all of the~~
28 ~~following:~~

29 ~~(1) The lack of housing is a critical problem that threatens the~~
30 ~~economic, environmental, and social quality of life in California.~~

31 ~~(2) California housing has become the most expensive in the~~
32 ~~nation. The excessive cost of the state's housing supply is partially~~
33 ~~caused by activities and policies of many local governments that~~
34 ~~limit the approval of housing, increase the cost of land for housing,~~
35 ~~and require that high fees and exactions be paid by producers of~~
36 ~~housing.~~

37 ~~(3) Among the consequences of those actions are~~
38 ~~discrimination against low-income and minority households, lack~~
39 ~~of housing to support employment growth, imbalance in jobs and~~

1 ~~housing, reduced mobility, urban sprawl, excessive commuting,~~
2 ~~and air quality deterioration.~~

3 ~~(4) Many local governments do not give adequate attention to~~
4 ~~the economic, environmental, and social costs of decisions that~~
5 ~~result in disapproval of housing projects, reduction in density of~~
6 ~~housing projects, and excessive standards for housing projects.~~

7 ~~(b) It is the policy of the state that a local government not reject~~
8 ~~or make infeasible housing developments that contribute to~~
9 ~~meeting the housing need determined pursuant to this article~~
10 ~~without a thorough analysis of the economic, social, and~~
11 ~~environmental effects of the action and without complying with~~
12 ~~subdivision (d).~~

13 ~~(c) The Legislature also recognizes that premature and~~
14 ~~unnecessary development of agricultural lands for urban uses~~
15 ~~continues to have adverse effects on the availability of those lands~~
16 ~~for food and fiber production and on the economy of the state.~~
17 ~~Furthermore, it is the policy of the state that development should~~
18 ~~be guided away from prime agricultural lands; therefore, in~~
19 ~~implementing this section, local jurisdictions should encourage, to~~
20 ~~the maximum extent practicable, in filling existing urban areas.~~

21 ~~(d) A local agency shall not disapprove a housing development~~
22 ~~project, including farmworker housing as defined in subdivision~~
23 ~~(d) of Section 50199.50 of the Health and Safety Code, for very~~
24 ~~low, low- or moderate-income households or condition approval,~~
25 ~~including through the use of design review standards, in a manner~~
26 ~~that renders the project infeasible for development for the use of~~
27 ~~very low, low- or moderate-income households unless it makes~~
28 ~~written findings, based upon substantial evidence in the record, as~~
29 ~~to one of the following:~~

30 ~~(1) The jurisdiction has adopted a housing element pursuant to~~
31 ~~this article that has been revised in accordance with Section 65588~~
32 ~~and that is in substantial compliance with this article, and the~~
33 ~~development project is not needed for the jurisdiction to meet its~~
34 ~~share of the regional housing need for very low, low-, or~~
35 ~~moderate-income housing.~~

36 ~~(2) The development project as proposed would have a~~
37 ~~specific, adverse impact upon the public health or safety, and there~~
38 ~~is no feasible method to satisfactorily mitigate or avoid the specific~~
39 ~~adverse impact without rendering the development unaffordable~~
40 ~~to low- and moderate-income households. As used in this~~

1 paragraph, a “specific, adverse impact” means a significant,
2 quantifiable, direct, and unavoidable impact, based on objective,
3 identified written public health or safety standards, policies, or
4 conditions as they existed on the date the application was deemed
5 complete.

6 (3) The denial of the project or imposition of conditions is
7 required in order to comply with specific state or federal law, and
8 there is no feasible method to comply without rendering the
9 development unaffordable to low and moderate income
10 households.

11 (4) Approval of the development project would increase the
12 concentration of lower income households in a neighborhood that
13 already has a disproportionately high number of lower income
14 households and there is no feasible method of approving the
15 development at a different site, including those sites identified
16 pursuant to paragraph (1) of subdivision (c) of Section 65583,
17 without rendering the development unaffordable to low and
18 moderate income households.

19 (5) The development project is proposed on land zoned for
20 agriculture or resource preservation that is surrounded on at least
21 two sides by land being used for agricultural or resource
22 preservation purposes, or which does not have adequate water or
23 wastewater facilities to serve the project.

24 (6) The development project is inconsistent with both the
25 jurisdiction’s zoning ordinance and general plan land use
26 designation as specified in any element of the general plan as it
27 existed on the date the application was deemed complete, and the
28 jurisdiction has adopted a housing element pursuant to this article.

29 (e) Nothing in this section shall be construed to relieve the local
30 agency from complying with the Congestion Management
31 Program required by Chapter 2.6 (commencing with Section
32 65088) of Division 1 of Title 7 or the California Coastal Act
33 (Division 20 (commencing with Section 30000) of the Public
34 Resources Code). Neither shall anything in this section be
35 construed to relieve the local agency from making one or more of
36 the findings required pursuant to Section 21081 of the Public
37 Resources Code or otherwise complying with the California
38 Environmental Quality Act (Division 13 (commencing with
39 Section 21000) of the Public Resources Code).

~~(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.~~

~~(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.~~

~~(h) The following definitions apply for the purposes of this section:~~

~~(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.~~

~~(2) "Housing for very low, low, or moderate-income households" means housing that meets any of the following criteria:~~

~~(A) At least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based.~~

~~(B) One hundred percent of the units shall be sold or rented to moderate-income households, as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.~~

~~(C) Beds in a prison.~~

1 ~~(3) “Area median income” means area median income as~~
2 ~~periodically established by the Department of Housing and~~
3 ~~Community Development pursuant to Section 50093 of the Health~~
4 ~~and Safety Code. The developer shall provide sufficient legal~~
5 ~~commitments to ensure continued availability of units for very low~~
6 ~~or low-income households in accordance with the provisions of~~
7 ~~this subdivision for 30 years.~~

8 ~~(4) “Neighborhood” means a planning area commonly~~
9 ~~identified as such in a community’s planning documents, and~~
10 ~~identified as a neighborhood by the individuals residing and~~
11 ~~working within the neighborhood. Documentation demonstrating~~
12 ~~that the area meets the definition of neighborhood may include a~~
13 ~~map prepared for planning purposes which lists the name and~~
14 ~~boundaries of the neighborhood.~~

15 ~~(5) “Disapprove the development project” includes any~~
16 ~~instance in which a local agency does either of the following:~~

17 ~~(A) Votes on a proposed housing development project~~
18 ~~application and the application is disapproved.~~

19 ~~(B) Fails to comply with the time periods specified in~~
20 ~~subparagraph (B) of paragraph (1) of subdivision (a) of Section~~
21 ~~65950. An extension of time pursuant to Article 5 (commencing~~
22 ~~with Section 65950) shall be deemed to be an extension of time~~
23 ~~pursuant to this paragraph.~~

24 ~~(i) If any city, county, or city and county denies approval or~~
25 ~~imposes restrictions, including design changes, a reduction of~~
26 ~~allowable densities or the percentage of a lot that may be occupied~~
27 ~~by a building or structure under the applicable planning and zoning~~
28 ~~in force at the time the application is deemed complete pursuant~~
29 ~~to Section 65943, that have a substantial adverse effect on the~~
30 ~~viability or affordability of a housing development for very low,~~
31 ~~low-, or moderate-income households, and the denial of the~~
32 ~~development or the imposition of restrictions on the development~~
33 ~~is the subject of a court action which challenges the denial, then the~~
34 ~~burden of proof shall be on the local legislative body to show that~~
35 ~~its decision is consistent with the findings as described in~~
36 ~~subdivision (d) and that the findings are supported by substantial~~
37 ~~evidence in the record.~~

38 ~~(j) When a proposed housing development project complies~~
39 ~~with applicable, objective general plan and zoning standards and~~
40 ~~criteria, including design review standards, in effect at the time~~

1 that the housing development project's application is determined
2 to be complete, but the local agency proposes to disapprove the
3 project or to approve it upon the condition that the project be
4 developed at a lower density, the local agency shall base its
5 decision regarding the proposed housing development project
6 upon written findings supported by substantial evidence on the
7 record that both of the following conditions exist:

8 (1) The housing development project would have a specific,
9 adverse impact upon the public health or safety unless the project
10 is disapproved or approved upon the condition that the project be
11 developed at a lower density. As used in this paragraph, a
12 "specific, adverse impact" means a significant, quantifiable,
13 direct, and unavoidable impact, based on objective, identified
14 written public health or safety standards, policies, or conditions as
15 they existed on the date the application was deemed complete.

16 (2) There is no feasible method to satisfactorily mitigate or
17 avoid the adverse impact identified pursuant to paragraph (1),
18 other than the disapproval of the housing development project or
19 the approval of the project upon the condition that it be developed
20 at a lower density.

21 (k) If in any action brought to enforce the provisions of this
22 section, a court finds that the local agency disapproved a project
23 or conditioned its approval in a manner rendering it infeasible for
24 the development of housing for very low, low-, or
25 moderate-income households, including farmworker housing,
26 without making the findings required by this section or without
27 making sufficient findings supported by substantial evidence, the
28 court shall issue an order or judgment compelling compliance with
29 this section within 60 days, including, but not limited to, an order
30 that the local agency take action on the development project. The
31 court shall retain jurisdiction to ensure that its order or judgment
32 is carried out and shall award reasonable attorney fees and costs of
33 suit to the plaintiff or petitioner who proposed the housing
34 development, except under extraordinary circumstances in which
35 the court finds that awarding fees would not further the purposes
36 of this section. If the court determines that its order or judgment
37 has not been carried out within 60 days, the court may issue further
38 orders as provided by law to ensure that the purposes and policies
39 of this section are fulfilled.

1 ~~(1) In any action, the record of the proceedings before the local~~
2 ~~agency shall be filed as expeditiously as possible and,~~
3 ~~notwithstanding Section 1094.6 of the Code of Civil Procedure, all~~
4 ~~or part of the record may be filed (1) by the petitioner with the~~
5 ~~petition or petitioner's points and authorities, (2) by the~~
6 ~~respondent with respondent's points and authorities, (3) after~~
7 ~~payment of costs by the petitioner, or (4) as otherwise directed by~~
8 ~~the court. If the expense of preparing the record has been borne by~~
9 ~~the petitioner and the petitioner is the prevailing party, the expense~~
10 ~~shall be taxable as costs.~~

11 SEC. 5.—

12 SEC. 3. Notwithstanding Section 17610 of the Government
13 Code, if the Commission on State Mandates determines that this
14 act contains costs mandated by the state, reimbursement to local
15 agencies and school districts for those costs shall be made pursuant
16 to Part 7 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the claim for
18 reimbursement does not exceed one million dollars (\$1,000,000),
19 reimbursement shall be made from the State Mandates Claims
20 Fund.